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In The

Supreme Court of the United States

DECEMBER TERM

No. 933

RUSSELL TROUTMAN, ET AL,

Petitioners,

versus

SARGENT SHRIVER, Director, Office of Economic Opportunity, and UNITED STATES OF AMERICA,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

■ ■ ■ ■

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on September 30th, 1969.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court, Southern District of Florida, is reported in 273 F. Supp. 415. The opinion of the Court of Appeals is presently unreported and is printed as Appendix A hereto.

JURISDICTION

The judgment of the Court of Appeals was entered September 30, 1969. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The Jurisdiction of the District Court was invoked under 28 U.S.C. § 2282 and 2284; and 5 U.S.C.A. § 1009 (when read in conjunction with the ICHORD amendment to the Economic Opportunity Act of 1964 as a "relevant statute").

QUESTION PRESENTED FOR REVIEW

A. Did Petitioners have standing as local Bar Associations, and as an attorney, to challenge the impending establishment of Office of Economic Opportunity Legal Service Programs, in their

respective counties without prior submission of such programs to said Associations by virtue of the ICHORD Amendment (42 U.S.C.A. § 2792 (b)(3), P.L.90-222)?

B. Did petitioners have standing as attorney and as Bar Associations to seek an injunction against impending activities of Legal Service Programs constituting criminal (unlawful) competition?

C. Did petitioners have standing as Taxpayers under the doctrine of FLAST v COHEN 392 U.S. 83, 20 L. Ed 947, 88 S. Ct. 1942?

STATUTES INVOLVED

A. Economic Opportunity Act of 1964, as amended, specifically 42 U.S.C.A. § 2792(b)(3):

> "A Legal Services program to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, counseling, education and other appropriate services. Projects involving legal advice, and representation shall be carried on in a way that assures

maintenance of a lawyer-client relationship consistent with the best standards of the legal profession. The Director shall make arrangements under which the State Bar association and the principal local bar associations in the community to be served by any proposed project authorized by this paragraph shall be consulted and afforded an adequate opportunity to submit, to the Director, comments and recommendations on the proposed project before such is approved or funded, and to submit, to the Director, comments and recommendations on the operations of such project, if approved and funded...."

B. The Administrative Procedure Act: "5 U.S.C. § 702 A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

"5 U.S.C. § 706 - To the extent necessary to decision and when

presented, the reviewing court shall interpret statutory provisions, and ....(2) Hold unlawful and set aside agency action.....(d) without observance of procedure required by law.

C. Constitution of the United States of America, Article I, § 9, Clause 7:

"No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law;..."

D. Constitution of the United States of America, Article I, § 1:

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

STATEMENT OF THE CASE

Russell Troutman, by amended complaint of January 10, 1967, alleged that Office of Economic Opportunity Legal Service Programs had been instituted in Dade, Volusia and St. Lucie Counties, Florida, and that the Director of the Office of Economic Opportunity had plans for imminent institution of an O.E.O. Legal Service Program in Orange County, Florida, where Troutman is a citizen, taxpayer, and practicing attorney. The complaint further alleged that if an O.E.O. Legal Service Program were instituted in Orange County, Troutman would be forced to compete with O.E.O. lawyers for a clientele who could afford to obtain representation by Troutman, i.e. fee producing cases. He further alleged that such a Legal Service Program would, as to such fee producing cases, engage in solicitation and maintenance (which tactics he is precluded by Cannon from adopting.) He further alleged that the proposed program contemplated the use of unlicensed persons in the unauthorized practice of law, and that such programs were being instituted without

the valid research required; that a corporation had been chartered in Orange County to conduct a Legal Service program under the Director's control and was funded, or would be funded by the Director. The expenditure of $30,000,000.00 of tax money from July 1965 to July 1966 was attacked as an unlawful expenditure of funds (there being no authorization for the Legal Service Program at that time.)

Four local Bar Associations, St. Lucie Orange, Osceola, and Seminole, moved to intervene as plaintiffs, charging that the Director was operating (St. Lucie) or was promoting or would operate O.E.O. Legal Service Programs in their respective counties.

Declaratory and injunctive relief was prayed for.

The District Court held that none of the appellants had standing to maintain the action, dismissing the Amended Complaint with prejudice, and denying the motions to intervene. The Fifth Circuit affirmed.

REASONS FOR GRANTING THE WRIT

Regarding issue "A" above, the Court is urged to take jurisdiction on the grounds that the interpretation of the ICHORD amendment below is a case of first impression involving a Federal statute. The interpretation placed thereon by the Fifth Circuit is contrary to the intent of Congress, jeopardizes the future of Legal Aid, and the independence and ethics of the Bar.

Regarding issue "B" above, the Court is urged to take jurisdiction on the grounds that the decision below conflicts with the decision of the District of Columbia Court of Appeals in WHITNEY NATIONAL BANK v. BANK OF NEW ORLEANS, 323 F. 2d 290, and with the decisions of this Court in CITY OF CHICAGO v. ATCHISON T. & S. F. RY, 357 U.S. 84, 78 S. Ct. 1063, 2 L. Ed. 2d 1174, and in FROST v CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, 278 U.S. 515, 73 L. Ed. 483, 49 S. Ct. 235 .

Regarding issue "c" the issue is raised as to whether FLAST v COHEN, 392 U.S. 83, 88 S. Ct. 1942, 20 L Ed. 2nd

947, grants a taxpayer standing to contest unappropriated expenditures under the "specific" limitation of Article I, Section 9 of the United States Constitution.

A. The ICHORD Amendment.

The issue posed is whether Congress intended to vest principal local Bar Associations with a right to know and to be heard prior to the approval or funding of Legal Service Programs, not whether the Bars were to have a "veto". The abuses the ICHORD amendment was designed to protect against have seen the creation of a "veto". It is vested in the hands of the Governors of the several states.

As first written, the Economic Opportunity Act of 1964 did not authorize a Legal Service Program. Nonetheless, one was instituted. State and Local Bars objected, this action was brought; the act was amended to authorize such a program, and the amendment was itself amended from the House floor by Representative Ichord. The debates are reflected in the Congressional Record at pg. 23479,

September 29, 1966. In offering his amendment Representative Ichord said:

> "Mr. Chairman, this amendment is prompted by a legal representation program that was approved in the state of Missouri embracing five counties in my district and four counties in the district of the gentleman from Missouri. This particular program was conceived by a professor at the University of Missouri. In the application for approval of the program the misrepresentation was made that all the local bar associations were in favor of the plan. Subsequently thereto eight or nine bar associations met and disapproved the particular application. Mr. Chairman I think the amendment is very explicit. It merely requires that before these programs are approved or funded they MUST be submitted to the local bar associations in order that the local bar associations can make comments and recommendations. (Emphasis supplied).
> .....Mr. Chairman, the intent of

this amendment is to REQUIRE the Office of Economic Opportunity to submit this program to the local bar associations for comment and suggestions before the application is funded.....Mr. Chairman, I know that the Gentleman from Florida (Mr. Gibbons) has a similar situation and is in favor of the amendment.....

Mr. Chairman (By Mr. Lennon) I want to commend the Gentleman from Missouri very highly upon his purpose in offering this amendment. Mr. Chairman, those of us in North Carolina delegation have heard from our state bar associations, our district and county bar associations, which associations have been very much concerned about the manner in which this question has been handled.

Mr. Chairman (Mr. Ichord) I would like to make it clear that this does not give the local bar association a veto over the proposed programs, but merely GIVES the various bar associations the opportunity to present suggestions and

recommendations thereon."

The last passage was cited by the Fifth Circuit as showing that the Bar Associations were not given a protected "competitive" interest. But the thrust of petitioners' argument on the ICHORD amendment is threefold:

(1) That "a public interest" was involved in which Congress has recognized the need for review of administrative action and the petitioners are significantly involved to such an extent as to have standing.
ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS v. CAMP 406 F. 2d 837.

(2) That the ICHORD amendment was enacted amid a storm of protest from local Bar Associations. It was intended to REQUIRE that the programs be submitted and the Bars afforded an opportunity to be heard. We urge that this, though not a "competitive right" is a "valuable right" falling squarely within the intent of this Court's decision in LEEDOM v KLYNE, 358 U.S. 184, 190, 79 S. Ct. 180, 3 L. Ed 2d 210, wherein this Court said:

"Here, differently from the Switchmen's case, absence of jurisdiction

> of the Federal courts would mean a a sacrifice or obliteration of a right which Congress has given professional employees, for there is no other means, within their control.....to protect and enforce that right. And the inference is strong that Congress intended the the statutory provisions governing the general jurisdiction of those courts to control. This Court does not lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers"

(3) Petitioners would further urge that the Administrative Proceedure Act, 5. U. S. C. § 702 is applicable, and, in light of the "right to be heard" given by the ICHORD amendment, confers standing. Such a "statutory condition precedent" is a "procedure" required by a provision of a "relevant statute". Agency action which does not comply with that procedure and which denys that "right to be heard" is action which renders the Bars, and their members, aggrieved. In ABBOTT

LABORATORIES v GARDNER, 381 U.S. 136, 87 S. Ct. 1507, 18 L. Ed 2d 681, this Court said, at page 1510:

> "The Administrative Procedure Act provides specifically not only for review of "Agency action made reviewable by statute, but also for review of 'final agency action for which there is no other adequate remedy in a court'. The legislative material elucidating that seminal act manifests a congressional intent that it cover a broad spectrum of administrative actions, and this Court has echoed that theme by noting that the Administrative Procedure Act's 'generous review provisions' must be given a 'hospitable interpretation'..... Again in Rusk v. Cort, supra... the Court held that only upon a showing of 'clear and convincing evidence' of contrary legislative intent should the courts restrict access to judicial review."

The "regulatory agency only" application of the Administrative Procedure Act urged by the Fifth Circuit is less than "hospitable". In essence the Fifth

Circuit holds that, unless the Act in question confers protection of a "competitive" interest, persons expressly given a right to be heard may be deprived of that right, and the court must infer that congress did not intend agency action, "contrary to procedure established by law" to be subject to judicial review.

The Supreme Court has never ruled on the question of whether the Administrative Procedure Act extended the concept of standing to include the procedural rights which many statutes provide in non-competitive context. The issue of whether 5 U.S.C. § 702 must be read in conjunction with 5 U.S.C. § 706, when determining questions of standing is now directly presented. We urge that the history of the Administrative Procedure Act, as explained by its author when discussing "legal wrong" as affected by the act, clearly shows that it was the intention of Congress to extend the doctrine of standing to include procedural rights. That history is set forth in Appendix C.

That Congress intended submission to

the local bars to be a required procedure is further manifested by the original text of the ICHORD amendment, and the version reported by the committee of conference, as is set forth in Appendix D hereafter. It is also urged that the "judicial reform" activity of the O.E.O. argues strongly for the Congressional intent, manifested above, to set a "watchdog". See the comments of Senator Murphy, Appendix E, Congressional Record, S14161, October 4, 1967. The actively solicited O.E.O. test case threatens to soon set Federal courts sitting as a council of revision of state and federal laws, contrary to the intention of the Constitution's framers, in a flood of litigation. Yet the rights of the individual poor to assert constitutional rights should not be abridged. Only local Bar Associations, when adequately informed, may detect the local Legal Service Program which has abandoned its duty to help individuals in need in favor of the politically motivated test case which diverts funds from the needy while building a wave of public revulsion to legal aid. It is in hope of preserving the middle way between the grave

abuses to which "legal aid" has been perverted and sacrifice of federal legal aid through the MURPHY Amendment (by Governor's veto) that we are come. Thus the nature of the issue, as well as its status as a question of first impression under a Federal statute, argues for review.

B. Standing from illegal competition. In WHITNEY v NATIONAL BANK OF NEW ORLEANS & TRUST CO. 323 F 2d 290, the District of Columbia Court of Appeals recognized that "unlawful" competition can confer standing. While no man has a right to be free of "lawful" competition, every man has a right to be free of a competition that is "unlawful" in the sense that it is independently illegal, rather than "unauthorized by law". The District of Columbia Court of Appeals noted this Court's language in ALABAMA POWER CO. v ICKES, 302 U.S. 464, at 484, 58 S. Ct. at page 306, 82 L Ed. 374, where the Court distinguished FROST v CORPORATION COMMISSION, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483, saying:

> "The difference between the Frost case and this is fundamental; for

> the competition contemplated there was unlawful while that of the municipalities contemplated here is entirely lawful."

This rule was followed by the District of Columbia District Court in BAKER, WATTS & CO. v SAXON, 261 F. Supp. 247 (which the Fifth United States Circuit Court cites with approval in SAXON v GEORGIA ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, 399 F 2d 1010, at 1017). To avoid the "illegal competition argument the Fifth Circuit cites with approval in this case, ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS INC. v CAMP, 406 F 2d 837, Cert. Granted, 395 U.S. 976, 23 L. Ed. 2d 764, thus making manifest the very conflict between its decision in the Troutman case, at bar, and WHITNEY NATIONAL BANK (C. Appl D.C.) supra, (not to mention the conflict between the Troutman ruling, and the alternative basis of its decision in SAXON, supra, set forth clearly in 399 F 2d 1010, from 1016 through 1017.) In all events the majority in SAXON, supra, note at pg 1017:

> "The decision of the Supreme Court in FROST v CORPORATION COMMISSION, 278 U.S. 235, 73 L. Ed. 483.... held that one engaged in a licensed business has standing to sue to enjoin unlawful competition."

In the case at bar, the Fifth Circuit held that an allegation of illegal competition is not the "balancing determinant of Plaintiff's standing". This puts the case at bar squarely in conflict with this Court's ruling in FROST supra, if the Fifth Circuit correctly perceived its effect in SAXON (as we urge it did). We also urge that the decision of the Fifth Circuit in the instant case was in conflict with CITY OF CHICAGO v. ATICHISON T. & S. F. RY. 78 S. Ct. 1063, 357 U.S., where at headnote 2, on pg 84, the Court said:

> "Parmelee has standing to secure review of the judgment below by appeal. It is enough, for purposes of standing, that we have an actual controversy before us in which Parmelee has a direct and substantial personal interest in the outcome.....Parmelee contends that

this operation (Transfer's) is prohibited by a valid city ordinance and asserts the right to be free from unlawful competition. Transfer on the other hand suggests that Parmelee has no standing because the city ordinance is invalid and Transfer's operation is lawful. It argues that a party has no right to complain about lawful competition, citing Alabama Power Co. v. Ickes 302 U.S. 464, 58 S. Ct. 300, 82 L. Ed. 374, and Tennessee Electric Power Co. v. T.V.A., 306 U.S. 118, 59 S. Ct. 366, 83 L. Ed 543. We do not regard either of these cases as controling here. It seems to us that Transfer's argument confuses the merits of the controversy with the standing of Parmelee to litigate them....."

We urge that petitioners are members of a licensed profession under the discipline of the cannons. We complain of the Director's creation of a criminal competition, unlawful under state law and the cannons, just as the Intervenor,

Parmelee complained of the "illegal" competition of Transfer. The issue of whether Respondents are in fact "running" fee producing cases under a disguised "kickback" arrangement to stretch appropriations is a question of jurisdictional fact to be litigated, and should not have been confused with Petitioners" right to litigate the issue. (It should be noted that N.A.A.C.P. v BUTTON, 371 U.S. 415 does not apply to fee producing cases). The use of Legal Aid for the "political Organization of the poor" is questionable under the Economic Opportunity Act. The funding of such activities from the pockets of private practitioners is cause for complaint. It confered standing under the decisions of this Court.

C. Taxpayer Standing under FLAST v. COHEN.

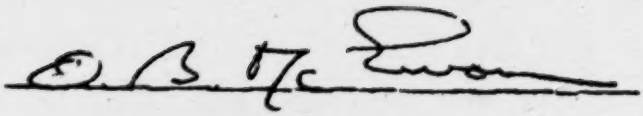
When this action was begun, the Economic Opportunity Act of 1964 did not authorize a Legal Service Program. Nonetheless, the Director spent millions of the Taxpayers funds for that purpose. This expenditure was, and is challenged. Those specific funds have never to this

day been appropriated to that purpose by act of Congress. If it be urged that Congress gave the Director a "blank check" by way of general authority to spend to "fight poverty", then the allegations of improper delegation of authority (contrary to Article I, section 1) were properly raised. Petitioners had standing as taxpayers to challenge the delegation of the one power that congress clearly can not delegate, in light of the mandate of Article I, Section 9 that no money shall be withdrawn from the treasury save on "Appropriation made by law". Administrative actions are not "law". Alternatively, if the expenditure was unauthorized, then it clearly violated Article I, Section 9 which is most explicit about unauthorized spending. There being a violation of an express constitutional limitation on the spending power, a taxpayer had standing under FLAST v COHEN, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed 2d 947, and the decision of the Fifth Circuit below is in conflict with the decision of this Court in FLAST, supra.

This problem (the use of funds appropriated for one purpose by administrative officials for another purpose) is one of the most serious in government today. Thus the question of whether FLAST applies to this problem by virtue of Article I, Section 9 is of great public moment, as well as a question of first impression under FLAST.

Respectfully Submitted

RUSSELL TROUTMAN

By 

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APPENDIX "A"
OPINION

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25539

RUSSELL TROUTMAN, ET AL,
Appellants,

versus

SARGENT SHRIVER, Director, Office of Economic Opportunity, and UNITED STATES OF AMERICA,
Appellees.

Appeals from the United States District Court for the Middle District of Florida

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(September 30, 1969)

Before THORNBERRY and SIMPSON, Circuit Judges, and SUTTLE, District Judge.

SIMPSON, Circuit Judge: The determinative issue in this appeal is whether the appellants, as four county bar associations and a taxpayer-citizen-attorney, have standing to challenge the constitutionality of the Economic Opportunity Act of 1964, as amended, 78 Stat. 508, 42 U.S.C.A. §2701 *et seq.*, or alleged acts or omis-

sions of the Director of the Office of Economic Opportunity regarding the establishment of legal aid service programs in their counties pursuant to the Act.

Appellant Russell Troutman by an amended complaint of January 10, 1967, alleged that Office of Economic Opportunity Legal Services Programs had been instituted in Dade, Volusia and St. Lucie Counties, Florida, and that the Director of the Office of Economic Opportunity had plans for imminent institution of an OEO Legal Services Program in Orange County, Florida, where Troutman is a citizen, taxpayer and practicing attorney. The complaint further alleged that if an OEO Legal Services Program were instituted in Orange County, Troutman would be deprived of the privilege and obligation of providing legal services to those who could not otherwise obtain representation and that he would be forced to compete with OEO lawyers for a clientele who could afford to obtain representation by Troutman. The complaint prayed for declaratory and injunctive relief, asserting the invalidity and impropriety of the Economic Opportunity Act and the impropriety and lack of authority of the Director's involvement with the profession of law.

The four local bar associations[1] moved to intervene as plaintiffs in Troutman's suit, charging that the defendants were operating,[2] promoting or prospectively would operate[3] OEO Legal Services Programs in their

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[1]The Orange County Bar, Osceola County Bar Association, Seminole County Bar Association, and St. Lucie County Bar Association.

[2]St. Lucie County

[3]The other three counties

respective counties. Generally the movants sought relief similar to that demanded by Troutman.

The Court below held that none of the appellants had standing to maintain the action. Without ruling upon the merits or other jurisdictional defenses interposed by the defendants, the district judge dismissed Troutman's amended complaint with prejudice and denied the motions to intervene. This appeal ensued. We affirm.

In order to resolve the question whether appellants have standing to contest the validity and constitutionality of the Act or the actions of the Director, it must be determined whether they are proper persons to request an adjudication of issues raised by such action. "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Flast* v. *Cohen*, 1968, 392 U.S. 83, 99, 88 S.Ct. 1942, ____, 20 L.Ed.2d 947, 961. The status asserted by the person whose standing is challenged must be examined to ascertain whether there is a logical nexus between the status asserted and the claim sought to be adjudicated. *Id.* at 102. It is the existence of a logical nexus which ensures that "the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" *Id.* at 99, *quoting* *Baker v. Carr*, 1962, 369 U.S. 186, 204, 82 S.Ct. 691, ____, 7 L.Ed.2d 663, 678.

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The first status asserted by the appellants is that of federal taxpayer.

> "The nexus demanded of federal taxpayers has two aspects to it. First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged." *Id.* at 102.
>
> "[I]n *Flast v. Cohen, supra,* * * * the [Supreme] Court set out the requirements which must be met by the taxpayer before he has standing. Essentially they are:
>
> 1. that he is in fact a taxpayer;
>
> 2. that the tax dollars are being expended in the furtherance of specific government business;
>
> 3. that there is a substantial expenditure; and
>
> 4. that these expenditures exceed the limits imposed by the establishment clause of the first amendment on the taxing and spending powers in Article I."

Protestants and Other Americans, etc. v. Watson, D.C. Cir. 1968, 407 F.2d 1264, 1265 (emphasis omitted).

It is important for our purposes that in *Flast v. Cohen* the majority pointed out that the *Flast* test of taxpayer

standing is consistent with the result of the Court's prior decision in *Frothingham v. Mellon*, 1963, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078, which ruled that a federal taxpayer is without standing to challenge the constitutionality of a federal statute. *See Flast v. Cohen, supra* at 104-105. The difference between *Flast* and *Frothingham* was that in the former the taxpayer attacked the statute on the ground of its inconsistency with a specific limitation upon the congressional taxing and spending power: the Establishment Clause of the First Amendment, whereas in the latter the taxpayer's challenge was bottomed upon the general provisions of the Tenth Amendment and the Due Process Clause of the Fifth Amendment. "In essence, Mrs. Frothingham was attempting to assert the States' interest in their legislative prerogatives and not a federal taxpayer's interest in being free of taxing and spending in contravention of specific constitutional limitations imposed upon Congress' taxing and spending power." *Flast v. Cohen, supra* at 105.

The appellants have not coupled their attack, as taxpayers, upon the Economic Opportunity Act with any specific limitation upon Congress' taxing and spending power and thus have failed to "establish a nexus between that status and the precise nature of the constitutional infringement alleged." *Id.* at 102. Therefore they were without standing to challenge the Act. *Frothingham v. Mellon, supra.*[4]

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[4]We have not overlooked our decision in Saxon, Comptroller of the Currency, etc. v. Georgia Assn. of Independent Insurance Agents, Inc. et al., 5 Cir. 1968, 399 F.2d 1010. Since that case involved the Comptroller's approval by regulation of competi-

The appellants' further claims of standing as citizens and attorneys must also fail. Exactly as with the status of taxpayer *qua* taxpayer, these claims of status have not been coupled with any assertion of direct injury in violation of specific constitutional limitations. "It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public." *Ex parte Levitt*, 1937, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493. (citations omitted). See also *Dade-Commonwealth Title Ins. Co. v. North Dade Bar Ass'n*, Fla. 1963, 153 So.2d 723, 726-27.

Neither do appellants have standing to challenge the Act or the actions of the Director because of their position as competitors, because they do not have the type of interest required to confer standing to challenge the Act in the status of competitors.

In Florida, attorneys enjoy no protections from competition by those qualified to engage in legal services.

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tion made expressly unlawful by statute, it is inapposite. As we held there, the insurance agents had a "statutory aid to standing", op. cit. at 1018, in addition to their legal right to protect themselves from unlawful competition. There was thus presented in that case a dispute in the necessary concrete adversary context. *Flast*, supra. See the further explication in Judge Thornberry's specially concurring opinion in *Saxon*, op. cit. at 1019-1021.

TROUTMAN, ET AL v. SHRIVER and U.S.A.

Restricting the practice of law to those who have been examined and found qualified "is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons . . ." *State ex rel. The Florida Bar v. Sperry*, Fla. 1962, 140 So.2d 587, 595, *rev'd on other grounds*, 1963, 373 U.S. 379, 83 S.Ct. 1322 10 L.Ed.2d 428.

The decisions of the courts appear to be uniform in denying standing to competitors who otherwise possess no legal right to be free from competition. See *Tennessee Power Co. v. T.V.A.*, 306 U.S. 118, 137, 59 S.Ct. 423, ____, 83 L.Ed. 543, 549 (1939); *Rural Electrification Admin. v. Central La. Elec. Co.*, 5 Cir. 1966, 354 F.2d 859, cert. denied 358 U.S. 815, 87 S.Ct. 34, 17 L.Ed.2d 54 (1966). These appellants lack such a legal right and hence lack standing.

The recent 8th Circuit case of *Association of Data Processing Service Organizations, Inc. v. Camp*, 8 Cir. 1969, 406 F.2d 837, cert. granted 395 U.S. 976, ____ S.Ct. ____, 23 L.Ed.2d 764 (June 23, 1969), sets forth a clear summation of the holdings of prior cases as to the legal interest required for standing to sue as a competitor:

> "In summary, a plaintiff may challenge alleged illegal competition when as complainant it pursues (1) a legal interest by reason of public charter or contract, Frost v. Corporation Comm'n, supra, (2) a legal interest by reason

of statutory protection, Baker, Watts & Co. v. Saxon, supra, or (3) a 'public interest' in which Congress has recognized the need for review of administrative action and plaintiff is significantly involved to have standing to represent the public, FCC v. Sanders Bros. Radio Station, supra. From this analysis, it seems clear that an allegation of 'illegal competition' is not the balancing determinant of a plaintiff's standing. The primary search must rest on whether the plaintiff's status is one which enjoys a private interest entitled to protection or is one which the law recognizes to be of such legal significance to allow a party to act as a public representative for a public interest."

Appellants earnestly argue that the Act itself confers standing upon them by virtue of the "Ichord Amendment", section 222(a) (3) of the Act, 42 U.S.C.A. §2809 (a) (3).[5] It is urged that, while the amendment does not expressly confer standing upon attorneys or bar associations as "aggrieved persons", *see, e.g., Scripps-Howard Radio, Inc. v. F.C.C.*, 1942, 316 U.S. 4, 62 S.Ct. 875, 86 L.Ed. 1229; *F.C.C. v. Sanders Bros.*

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[5]The Ichord Amendment reads as follows:

"The Director shall make arrangements under which the State bar association and the principal local bar associations in the community to be served by any proposed project authorized by this paragraph shall be consulted and afforded an adequate opportunity to submit, to the Director, comments and recommendations on the proposed project before such project is approved or funded, and to submit, to the Director, comments and recommendations on the operations of such project, if approved and funded." 42 U.S.C.A. §2809(a) (3).

Radio Station, 1940, 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869; it created a right of local bar associations to be consulted prior to approval or funding of legal services programs and by implication confers standing to contest the Director's actions. We disagree.[6]

The Ichord Amendment as originally passed in 1966 provided that the Director was to consult with the local bar associations, but it was made clear at the time by the sponsor of the amendment that it was not intended to give the local bar associations any form of veto over proposed programs but rather was for the purpose of giving them an opportunity to present suggestions and recommendations as to the proposed programs. *See* 112 Cong. Rec. 24437 (Sept. 29, 1966).[7] The provision as originally enacted was amended in 1967 to provide the State bar associations an opportunity to make comments and recommendations regarding proposed projects, but the amendment was explained as being for the purpose of providing more helpful assistance to the Director due to the broader base and typically better staff assistance which State bar

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[6]Appellants contend that the amendment was violated as to Orange and St. Lucie Counties. The pleadings assert that there was an O.E.O. Legal Service chartered and about to start operations in Orange County, while in St. Lucie County the O.E.O. Legal Services Program was already in operation. The O.E.O. was then promoting programs in Osceola and Seminole, the other two counties whose bar associations sought leave to intervene.

[7]Mr. Ichord: ". . . this does not give the local bar associations a veto over the proposed programs but merely gives the various bar associations the opportunity to present suggestions and recommendations thereon." 112 Cong. Rec. 24437 (Sept. 29, 1966).

associations can provide. See 113 Cong. Rec. No. 154, S13856 (Sept. 28, 1967).[6]

We are unpersuaded that the Ichord Amendment confers standing upon appellants because we perceive no legislative purpose in that amendment to protect a competitive interest of appellants. There are times when competitors are given standing by Congress to challenge competition which allegedly is in violation of a statute where the statute itself is said to be enacted for the express protection of the class of competitor complaining. In order to fall within this classification, however, the particular statutory provision invoked must reflect a legislative purpose to protect a competitive interest, *Hardin v. Kentucky Util. Co.*, 380 U.S. 1, 5-6, 88 S.Ct. 651, ____, 19 L.Ed.2d 787, 792 (1968). But where, as here, the purpose of the statutory provision is simply to benefit the public at large by easing the task of administration of the statute, no right, nor legal standing, is conferred.

Appellants' reliance upon *Abbott Laboratories v. Gardner*, 1967, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d

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[6]Senator Cooper explained the 1967 amendment which he introduced, as follows:

> "The present language of the bill provides that in assisting in the provision of legal services to the poor, the director shall make arrangements with the principal bar associations in the area. My amendment provides that, in addition, they shall seek the advice and comments of the State bar association. I believe that State bar associations are more broadly based, and they usually have a staff which is better able to provide helpful assistance.: 113 Cong. Rec. #154, S13856 Sept. 28, 1967).

681, is misplaced. *Abbott* involved an essentially *regulatory* statute requiring the petitioners to make significant changes in their everyday business practices, *id.* at 154, including the possible destruction of existing property rights, *id.* at 152, or possible criminal sanctions for noncompliance, *id.* at 154. Thus the Government there acted not as a competitor but as a regulator interfering with legally recognized rights. Where legally recognized rights such as the use or enjoyment of property are sought to be protected by imposition of a consultation requirement as a condition precedent to agency action, the individuals affected by agency noncompliance with the condition, or organizations representing their interests, may have standing to contest the action by virtue of the condition. *See Citizens Ass'n. v. Simonson,* D.C. Cir. 1968, 403 F.2d 175. Appellants, however, have demonstrated no legal rights sought to be protected by Congress, there ordinarily being no right to be free from competition and the statute having been passed for the benefit of the public at large.

AFFIRMED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT
OF FLORIDA ORLANDO
DIVISION

RUSSELL TROUTMAN

Plaintiff,

v.

66-188 ORL-CIV

SARGENT SHRIVER, Director,
Office of Economic Opportunity
and UNITED STATES OF AMERICA

Defendants.

ORDER OF DISMISSAL

The first question to be decided by this Court is whether plaintiff has any standing to maintain this action. Also, whether the proposed intervenors have any standing to intervene as parties plaintiff. The defendants by their motion to dismiss the amended complaint say this Court is without jurisdiction over the subject matter of this action

because plaintiff lacks standing to sue.

In Tennessee Elec. Power Co. v. TVA, 306 U.S. 118 (1937), 18 power companies sued to enjoin operation of the TVA, asserting unconstitutionality. The Court held the plaintiffs to be without standing to raise the constitutional issues, because "the damage consequent on competition otherwise lawful, is in such circumstances damnum absque injuria and will not support a cause of action or right to sue". Id. at 140. See Perkins v. Lukens Steel Co., 310 U.S. 113 (1940). Accordingly, we do not here reach the constitutional questions presented by the plaintiff and proposed intervenors, including the question of delegation of legislative power.

In a recent decision the Second Circuit held that the owners of a New York hotel lacked standing to sue

federal and local agencies and officials to enjoin operation of an urban redevelopment program which included a transient hotel. Berry v. Housing & Home Finance Agency 340 F.2d 939(2nd Cir. 1965).

> "Economic loss stemming from increased competition, even though made possible by federal aid, is damnum absque injuria".

The Court went on to state that:

> "If local officials do not comply . . the housing agency can vindicate the public interest by withholding federal funds, but private hotel owners are given no remedy. The public good . . . could well be frustrated by the delay and expense of litigation if allowed on the suit of every person objecting to possible competition." Id. at 329.

In Kansas City Power & Light Co. v. Mckay, 225 F.2d 924 (D.C. Cir.), cert.

denied, 350 U.S. 884 (1955), utility companies attacked the validity of certain federally supported power programs. The Court was asked to hold that petitioners were within Section 10 of the Administrative Procedure Act which gives a "right of review to any person suffering legal wrong . . . or adversely affected or aggrieved within the meaning of any statute". The Court stated that Section 10 was no more than declaratory of existing law and held that the utility companies had not suffered a legal injury under present law and thus had no standing to sue. Accord, United Milk Producers v. Benson, 225 F.2d 527 (D.C. Cir. 1955)(Milk producers have no standing to complain of a price order enabling their competitors to undercut them). Pittsburgh Hotels Ass'n v. Urban Redevelopment Authority, 202 F.

Supp. 486 (W.D.Pa. 1962). See also Jaffe Administrative Law 528 (1965).

In Rural Electrification Admin. v. Central Louisiana Elec. Co., 354 F. 2d 859 (1966), the Court said:

"Under Section 10(a) of the Administrative Procedure Act, 5 U.S.C.A. §1009, it seems to be settled in a case of this kind that if Congress has failed to give an appellant standing to sue by express or implied provisions of statute . . . mere economic competition made possible by governmental action (even if allegedly illegal) does not give standing to sue to restrain such action. Pennsylvania Railroad Company v. Dillon, 1964, 118 U.S. App. D.C. 257, 335 F2d 292, citing Tennessee Electric Power Company v. Tennessee Valley Authority, 306 U.S. 118, 59 S. Ct.

366, 83 L. Ed. 543 (1939); Alabama Power Company v. Ickes, 302 U.S. 464, 58 S. Ct. 300, 82 L. Ed. 374 (1938); Kansas City Power and Light Company v. McKay, 96 U.S. App D. C. 273, 225 F. 2d 924, cert. denied, 350 U.S. 884, 76 S. Ct. 137, 100 L. Ed. 780 (1955); and Texas State AFL-CIO v. Kennedy, 117 U.S. App. D.C. 343, 330 F. 2d 217 (1964)".

Under the Economic Opportunity Act of 1964, there is no provision allowing for a right of review for any party aggrieved and thus under the decision in Kansas City Power & Light Co. v. McKay, supra, and Rural Electrification Admin. v. Central Louisiana Elec. Co., Supra, no such right arises under the Administrative Procedure Act. Thus, an individual legal practitioner in the State of Florida does not have standing to maintain this action and

the proposed intervenors do not have standing to intervene as parties plaintiff either because of the potential adverse competition of the Office of Economic Opportunity legal program or because of status as a citizen or taxpayer.

It is, therefore, upon consideration,

ORDERED:

1. Defendants motion to dismiss the amended complaint is granted and this suit is dismissed, with prejudice, at the cost of the plaintiff.

2. The several motions to intervene as parties plaintiff are denied.

DONE AND ORDERED at Jacksonville, Florida, this 6th day of September, 1967.

S/Charles R. Scott
Judge

APPENDIX B
IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1967

No. 25539

D. C. Docket No. Civ 66-188-Orl.

RUSSELL TROUTMAN, ET AL,

Appellants,

versus

SARGENT SHRIVER, Director, Office of Economic Opportunity, and UNITED STATES OF AMERICA,

Appellees.

Appeals from the United States District Court for the Middle District of Florida

Before THORNBERRY and SIMPSON, Circuit Judges, and SUTTLE, District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that appellants pay to appellees, the costs on appeal to be taxed by the Clerk of this Court.

September 30, 1969

Issued as Mandate: Oct. 22, 1969

APPENDIX C

Congressional Record, House, May 24, 1946, pg 5654 (Report of Mr. Walter, Author of the bill which became the the Administrative Procedure Act):
"Right of Review, Section 10(a) The first subsection of section 10 provides that any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review. LEGAL WRONG MEANS ACTION OR IN-ACTION IN VIOLATION OF THE LAW OR THE FACTS. THE CATEGORIES OF QUESTIONS OF LEGAL WRONG ARE SET FORTH AS SUBSECTION (e) OF SECTION 10." (Emphasis supplied)
On page 5654, Congressional Record, Section 10(e) appears thus:

> ";....They (the courts) must hold unlawful any action, findings, or conclusions which they find to be, first arbitrary or in abuse of discretion; second, contrary to any provision of the Constitution; third, in violation of statutes or statutory rights.....fourth without observance of procedure required by law."

APPENDIX D

Congressional Record, House, September 29, 1966, pg 23479:

Amendment offered by Mr. Ichord: On page 16, line 11, before the period, insert the following: "Provided that all proposals for programs of legal advice and legal representation shall not less than 60 days prior to their approval, or in the case of existing programs, prior to any additional funding under the title, be submitted by the applicant to the bar associations in the areas intended to be served by the programs for such associations's review, comments, and recommendations."

Report, 2298 (committee of conference) Congressional Record, Oct 17, 1966, pg 26058 reported the conforming changes. The ICHORD amendment, as so reported, read: ".....provided that the Director SHALL establish procedures to ASSURE that the principal local bar associations in the area to be served by any proposed program of legal advice and representation are afforded an

adequate opportunity to review the the proposed program and to submit comments and recommendations thereon before such program is approved or funded."

APPENDIX E

October 4, 1967, Congressional Record, Senate, S14161 - Economic Opportunity Amendments of 1967.....

.....Mr. MURPHY. I yield myself another 3 minutes.

I cannot for 1 minute believe that this was the original intent of the legal service program. I cannot believe that affording legal advice....to persons unable to afford it in order to promote justice should include the right to bring suit against a Federal, State or local agency supported by taxpayers' money when the party is represented by another agency or program which is financed by the same funds.

Although I will not dwell on this subject, I cannot believe that in either case the welfare recipient or the farmworkers went to the CRLA for assistance. It is far more likely that the CRLA drummed up clients to come and do battle. This is the problem of Mr. Shriver and Mr. Earl Johnson, the Director of the legal services program, to determine whether the attorneys employed by this

program are working and conducting themselves in a proper manner.

.....The program was designed to aid the poor in achieving the legal rights and privileges which the rich can afford. It was designed to make them equal to the average citizen in the courts of our Nation. And I cannot believe that the average citizen goes to court with a test case which is of a spurious nature. The disadvantaged should be helped, but we must remember the burden which is being placed on the taxpayer in providing benefits under this program. There are too many cases for legal service attorneys to handle without involving themselves in these test cases."

Mr. Murphy's amendment was lost by a narrow margin in 1967. But these debates are useful background for the 1969 amendment, which was of a more extreme nature, and which was not lost.